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ILLINOIS INDEPENDENT TELEPHONE)
ASSOCIATION)

Petition for initiation of an investigation of)
the necessity of and the establishment of a)
Universal Service Support Fund in)
accordance with §13-301(d) of the Public)
Utilities Act)

Docket No. 00-0233

Illinois Commerce Commission On Its Own)

Investigation into the necessity of and, if)
appropriate, the establishment of a)
Universal Support Fund pursuant to Section)
13-301(d) of the Public Utilities Act)

Docket No. 00-0335

MOTION TO STRIKE CERTAIN TESTIMONY
OF GENIO STARANCZAK

NOW COME Intervenor, Leaf River Telephone Company, Montrose Mutual Telephone Company, New Windsor Telephone Company, Oneida Telephone Exchange, Viola Home Telephone Company, and Woodhull Community Telephone Company, by their attorney, Gary L. Smith, of Loewenstein, Hagen, & Smith, P.C, and pursuant to Sec. 200.200 of the Rules of Practice of the Illinois Commerce Commission (83 Ill.Adm.Code 200.200) hereby move to strike as speculation and irrelevant certain testimony filed by the Staff of the Illinois Commerce Commission as more fully set forth herein:

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A.

1. On September 16, 2001, the Commission entered its Second Interim Order in the above-captioned proceeding.

2. Thereafter, several parties to the proceeding filed Petitions for Rehearing, and the Staff filed a Motion for Clarification. Staff did not file a Petition for Rehearing. On October 26, 2001, Administrative Law Judge Donald L. Woods forwarded to the Commission a Memorandum in which he recommended, *inter alia*, granting rehearing on the following issue:

The second computational issue involves the actual affordable rate proposed by Verizon. The rate was based upon the basic service rate of \$16.99, plus an adder for usage. Verizon witness Beauvais testified that he used a benchmark of 100 minutes per month as a usage factor, which resulted in an additional \$5.24 being added to the \$16.99, resulting in the \$22.23 composite rate. The rehearing applications all posit that Verizon's tariffed usage rate is \$.034 per minute, which should have lead to a usage adjustment of \$3.40 and an affordable rate of \$20.39.

3. On October 31, 2001, the Commission granted rehearing upon this issue.

4. On November 21, 2001 Verizon filed a notice with the Commission in these dockets which stated, *inter alia*, as follows:

It remains Verizon's position that the minimum affordable rate should be set at an amount no less than the rate its similarly situated customers must pay. For purposes of this proceeding, Verizon now has no objection to the use of the \$20.39 figure as discussed in the IITA's Brief on Exceptions. (Emphasis added.)

5. On December 6, 2001, pursuant to a schedule set for rehearing, the Staff of the Illinois Commerce Commission pre-filed the direct testimony of Genio Staranczak on rehearing in this proceeding.

6. The direct testimony on rehearing of Genio Staranczak which contains the following:

Q. How would you recommend that the Commission resolve the issues concerning the affordable rate calculations that you have brought up?

A. * * * Since Verizon's and the IITA's proposed affordable rate lack adequate support, the Commission should adopt Staff's original affordable rate proposal of \$24 per month for residence and \$27 per month for business. Staff continues to believe that for horizontal equity reasons, the affordable rate should be set at a level higher than a typical rural Verizon subscriber might pay. Moreover, this type of decision will allow the Commission to avoid the statistical quagmire associated with determining what constitutes a 'typical' Verizon subscriber, how many calls this subscriber makes, and how much that 'typical' subscriber pays for usage and whether to adjust for the size of local calling areas, whether to adjust for EAS calling etc. Any order that 'rules' on these issues openly invites further litigation.

Again, Staff notes that some IITA member company subscribers already pay local rates in excess of Staff's original affordable rate proposal (e.g. residential subscribers in the Frontier Lake Kirksville exchange pay \$30.69 a month and in the Frontier Midland Woodburn exchange pay \$24.33 a month) while other IITA subscribers pay rates close to Staff's affordable rate (e.g. Yates City residential subscribers pay \$22.45 a month). Affordable rates in other states, such as Wyoming, have been set at much higher levels (\$34) than what Staff is proposing for Illinois. Staff Exhibit 3.0 at 14 (filed in the original proceeding). Moreover,

adopting Staff's affordable rate proposal would also serve to reduce the size of the USF fund and lessen the burdens placed on other subscribers in Illinois who will support this fund through surcharges.

The Commission may be reluctant to adopt \$24 and \$27 as affordable rates because the figures seem to be arbitrary. Setting an affordable rate, however, is a policy decision that ultimately requires the exercise of reasoned judgment.

* * *

[f]lawed and inconsistent with horizontal equity, or picking an affordable rate (\$24 and \$27) that is based on reasoned judgment and is consistent with horizontal equity.

7. The above-cited passage is entirely irrelevant to this proceeding and beyond the scope of rehearing and should be stricken from the testimony of Genio Staranczak. The order allowing rehearing did not reopen all issues on the affordable rate and the staff did not file for rehearing and it is precluded now from arguing new issues.

8. Section 200.610(a) of the Rules of Practice before the Illinois Commerce Commission provides that "[I]n all proceedings subject to this part, irrelevant, immaterial or unduly repetitious evidence shall be excluded." 83 Ill.Adm.Code 200.610, citing Section 10-40 of the Illinois Administrative Procedure Act, 5 ILCS 100/10-40. This is consistent with the well-established Illinois evidence doctrine that "before evidence of any kind is admissible, it must be relevant." *Elder v. Finney*, 256 Ill.App.^{3d} 424, 427; 628 N.E.^{2d} 393 (1st Dist. 1993), citing *People v. Kimbrough*, 138 Ill.App.^{3d} 481 (1st Dist. 1985).

9. Evidence is not relevant if it is not material, or if it does not establish a fact in consequence in determining the proceeding; in other words, have probative value. *Patch v. Glover*, 248 Ill.App.^{3d} 562, 567; 618 N.E.^{2d} 583 (1st Dist. 1993). A court or tribunal does not abuse its discretion when it refuses to admit evidence which has little probative value, which is incompetent to prove matters at issue, or which does not aid proving or disproving a matter in controversy because the inferences which can be drawn from the offered evidence are only vague or conjectural. *Butter v. Kent*, 275 Ill.App.^{3d} 217, 230; 655 N.E.^{2d} 1120 (1st Dist. 1995).

10. In determining relevance, the court or tribunal must consider the offered evidence in the light of the factual issues raised by the pleadings, and does not commit error when it refuses to admit testimony which does not bear on the specific matters at issue in the proceeding. *Schneiderman v. Kahalnik*, 200 Ill.App.^{3d} 626, 635-36; 558 N.E.^{2d} 334 (1st Dist. 1990).

11. The Commission's order granting rehearing specifically did not entertain the issue of an affordable rate of \$24 residence and \$27 business. Accordingly, the Staff's position, which was not adopted by the Commission originally or on rehearing, is not an issue in this proceeding and the above testimony should be stricken.

B.

12. Starting on page 3 of his testimony, Mr. Staranczak is asked which of the two affordable rate calculations of Verizon is "correct." On pages 3 and 4 of his pre-filed testimony, Mr. Staranczak proceeds to "speculate" and "guess" about the meaning of Dr.

Beauvais' testimony and further speculate and guess about Verizon records and calculations which were not placed in evidence. Opinion testimony cannot be based on conjecture or guesswork. *Gill v. Foster*, 157 Ill.^{2d} 190 (1993). Furthermore, the testimony on page 7, lines 136-137 and 147-152 and continuing on page 8 beginning on line 153 through line 160 should be stricken as speculative.

13. A question that asks a witness to guess or surmise what occurred is objectionable as speculative. *Lyle R. Jager Agency v. Steward*, 253 Ill.App.^{3d} 631, 625 N.E.^{2d} 397 (1993). Thus a question asking the witness what "probably occurred or asking for her "impression," is not admissible as calling for speculation or conjecture. *Allen & Wrisley Co. v. Burke*, 203 Ill 250, 67 N.E. 818 (1903). A question that asks a witness to guess about the contents of missing records is likewise not admissible. *Chidichino v Industial Com.* 278 Ill.App.^{3d} 369, 662 N.E.^{2d} 611 (1996).

14. In the present case, the above testimony of Staranczak calls for nothing more than speculation about what Verizon's records show or what Dr. Beauvais meant in his earlier testimony and should be stricken. Verizon has not presented any evidence regarding its records and its calculation for the affordable rate in this proceeding. Instead Verizon's notice indicates that it agrees that the affordable rate for independent telephone companies should be the same rate as Verizon's ratepayers pay and Verizon then agrees to an affordable rate of \$22.39. The Staff has not subpoenaed any records from Verizon nor requested any documents in discovery from Verizon and it is improper for the Staff now to present pure speculation, conjecture, and guesswork on evidence that has not been

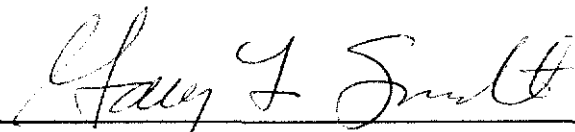
sought by the Staff and has been contradicted by Verizon's notice. The testimony of Genio Staranczak on page 7, lines 136-137 and 147-152, should be stricken.

WHEREFORE, Leaf River Telephone Company, Montrose Mutual Telephone Company., New Windsor Telephone Company, Oneida Telephone Exchange, Viola Home Telephone Company, and Woodhull Community Telephone Company request that the above testimony of Genio Staranczak be stricken, and for such other and further relief as the Commission deems just.

Respectfully submitted,

LEAF RIVER TELEPHONE COMPANY
MONTROSE MUTUAL TELEPHONE COMPANY
NEW WINDSOR TELEPHONE COMPANY
ONEIDA TELEPHONE EXCHANGE
VIOLA HOME TELEPHONE COMPANY
WOODHULL COMMUNITY TELEPHONE CO.

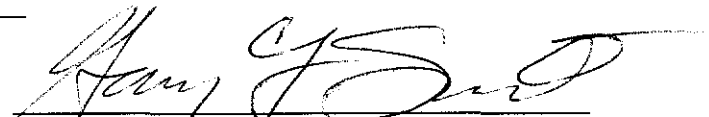
By:



Gary L. Smith

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing motion were served upon the parties on the service list in this case by e-mail, or by depositing same in the U.S. Mail, first class postage prepaid, on Dec. 18, 2001



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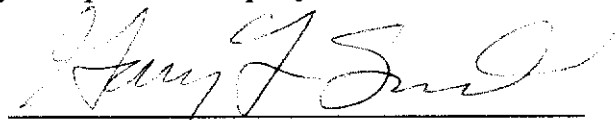
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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of the Public Utilities Act.]	

NOTICE OF FILING

To:: Service List Attached

You are hereby notified that I have this 18th day of Dec., 2001, filed with the Chief Clerk of the Illinois Commerce Commission the Motion to Strike of Intervenor Leaf River Telephone Company, Montrose Mutual Telephone Company., New Windsor Telephone Company, Oneida Telephone Exchange, Viola Home Telephone Company, and Woodhull Community Telephone Company.



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